

In the Matter of: )  
 ) Docket No.  
Developing Statewide Avian ) 06-OII-1  
Guidelines )  
 )

SACRAMENTO, CALIFORNIA

10:05 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

John Geesman, Presiding Member

Jackalyne Pfannenstiel, Associate Member

ADVISORS PRESENT

Melissa Jones

Timothy Tutt

STAFF PRESENT

Rick York

Susan Sanders

John Mathias

PUBLIC ADVISER

Mike Monasmith

ALSO PRESENT

John McCamman  
California Department of Fish and Game

Julia Levin  
Audubon California

Mark Sinclair (via teleconference)  
Clean Energy States Alliance

Andy Linehan  
PPM Energy

Brenda LeMay  
Horizon Wind Energy

James A. Walker  
enXco  
American Wind Energy Association

ALSO PRESENT

Gary George  
Los Angeles Audubon Society

Anne E. Mudge, Attorney  
Morrison and Foerster, LLP  
California Wind Energy Association

V. John White  
Center for Energy Efficiency and Renewable  
Technologies

Kim Delfino  
Defenders of Wildlife

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1 P R O C E E D I N G S

2 10:05 a.m.

3 PRESIDING MEMBER GEESMAN: This is a  
4 workshop of the California Energy Commission's  
5 Renewables Committee in our initial efforts to  
6 develop advisory guidelines for the development of  
7 wind projects in California.

8 I am John Geesman, the Presiding Member  
9 of the Renewables Committee. To my right,  
10 Commissioner Jackalyne Pfannenstiel, the Associate  
11 Member of the Committee and the Vice Chair of the  
12 Commission. To my immediate left, Melissa Jones,  
13 my Staff Advisor. To Commissioner Pfannenstiel's  
14 right, Tim Tutt, her Staff Advisor.

15 I'm not going to try to restate the  
16 notice that went out which does provide a lengthy  
17 description of the background of this effort and  
18 its purpose. I think most of you realize the  
19 Commission vowed to develop such guidelines in its  
20 Integrated Energy Policy Report which we adopted  
21 last November. This is our initial public  
22 session.

23 We'll be conducting workshops throughout  
24 the process, and I suspect that most of your  
25 interaction between workshops will be with our

1 staff. Commissioner Pfannenstiel and I envision  
2 coming in and out of the process, but always in a  
3 public workshop. And I suspect you should look at  
4 us primarily as punctuation points to the process.

5 This is a difficult issue, as I think  
6 everybody understands. And there's some fairly  
7 deeply held views. My efforts will be to try and  
8 get people to distinguish between opinions and  
9 hypotheses and actual empirical data or results.  
10 And to move us along.

11 Most of the substantive heavy lifting I  
12 suspect will be done in interactions which the  
13 various parties have with each other and with our  
14 staff. But Commissioner Pfannenstiel and I look  
15 forward to our role as punctuation points.

16 Commissioner Pfannenstiel?

17 ASSOCIATE MEMBER PFANNENSTIEL: Nothing,  
18 thank you.

19 PRESIDING MEMBER GEESMAN: Rick, do you  
20 want to start us off then?

21 MR. YORK: First I'd like to start, my  
22 name is Rick York; I'm on staff here at the Energy  
23 Commission. I supervise the biological resources  
24 unit here at the Energy Commission.

25 I wanted to go through very quickly some

1 housekeeping points. The bathrooms, all-important  
2 bathrooms, are out in the foyer in that corner of  
3 the building. If you have cellphones on, please  
4 turn them off or on stun or on vibrate, whatever.

5 If you are planning to speak today -- is  
6 there anyone here from the Public Adviser's  
7 Office? The Public Adviser's Office just walked  
8 in. Do you want to make a statement about the  
9 process?

10 MR. MONASMITH: Certainly, if you  
11 think --

12 MR. YORK: Definitely.

13 MR. MONASMITH: Good morning, I'm Mike  
14 Monasmith with the Public Adviser's Office. Just  
15 quickly, if any of you are planning on making  
16 comments at the end of today's session, please try  
17 to fill one of these blue forms out. If you don't  
18 have one I'll bring one by later. And just  
19 quickly fill them out. We will give them to the  
20 Commissioners and they will call you up at the end  
21 for public comment.

22 Unless there's direct comment you want  
23 to make, at which point just ask the  
24 Commissioners. So, that's about it, thanks.

25 MR. YORK: Thank you. There is phone-in

1        capability, so we will be joined by folks on the  
2        phone. And John Mathias down here will be  
3        coordinating that. How many folks do we have on  
4        the phone right now, John?

5                MR. MATHIAS: Five.

6                MR. YORK: Five. I believe that their  
7        phones are muted right now; they can only listen  
8        in. And at times, if they do want to make a  
9        statement, John will make that connection.

10               I hope all of you were able to pick up  
11        copies of the presentations, the agenda for  
12        today's meeting, some of the background material.  
13        It's at the desk, the table, as you came into the  
14        building here this morning.

15               I guess I'm giving the first  
16        presentation. I'd like to give you some -- what  
17        button do I push to turn the lights out? Kevin  
18        will take care of it. Thank you.

19               I want to give you a very brief overview  
20        of a variety of things today. And then turn the  
21        presentation over to Susan Sanders, who's going to  
22        talk to you about the outline that we sent out a  
23        month ago.

24               Ah, that's correct, I'm a little out of  
25        step here. We do have Chief Deputy Director John



1 McCamman from the Department of Fish and Game who  
2 would also like to make an opening statement  
3 before I get rolling here.

4 MR. McCAMMAN: Appreciate the  
5 opportunity to meet with you folks today, on  
6 behalf of the Department of Fish and Game, for  
7 developing statewide guidelines for reducing  
8 wildlife impacts for wind energy development. And  
9 I wanted to make sure that our comments were on  
10 the public record, so thank you for the  
11 opportunity.

12 The Department of Fish and Game's  
13 overall mission is to preserve and protect,  
14 restore and enhance fish and wildlife resources  
15 and their habitats for the use and enjoyment of  
16 the citizens of California.

17 Under the California Environmental  
18 Quality Act, Fish and Game has a role as a state  
19 trustee for fish, wildlife and habitat resources.  
20 And is mandated to consult with CEQA lead agencies  
21 to advise and recommend measures to avoid and  
22 reduce project impacts to fish, wildlife and  
23 habitat resources, review environmental documents,  
24 recommend mitigation measures and develop and  
25 perform monitoring for purposes of CEQA.

1                   In addition, Fish and Game recognizes  
2           the many environmental benefits of wind power as a  
3           clean renewable source of energy and the need to  
4           develop new energy generation capacity to maintain  
5           California's high standard of living.

6                   In our role under CEQA, and as a public  
7           trustee, we have a goal for our participation in  
8           this effort to develop and make available a set of  
9           guidelines and recommendations which will assist  
10          project proponents and local agencies in  
11          evaluating potential impacts to avian wildlife; to  
12          identify necessary information and studies needed  
13          to inform the CEQA process; local project  
14          approvals, project permitting and post-project  
15          monitoring.

16                   To reduce effects on avian wildlife  
17          through the repowering of existing facilities;  
18          better project design, siting and operation to  
19          insure compliance with environmental laws.

20                   To identify a framework to develop  
21          workable CEQA and permit mitigations for  
22          unavoidable project effects; and assist local  
23          agencies in successful CEQA compliance for  
24          proposed projects.

25                   Fish and Game Staff is here, and Fish

1 and Game pledges to work cooperatively with the  
2 Energy Commission, the wind energy industry,  
3 environmental groups and other stakeholders to  
4 produce a useful guidance document.

5 We've retained a technical coordinator  
6 and assembled a staff team to provide input and  
7 review and oversight of the proposed guidelines  
8 and guideline development process.

9 Our staff team is headed by Scott Flint,  
10 who's here today. And I promised him I wouldn't  
11 tell anybody it's his birthday, so.

12 (Laughter.)

13 MR. McCAMMAN: So, on behalf of Fish and  
14 Game I thank you very much. I appreciate the  
15 ability to participate.

16 PRESIDING MEMBER GEESMAN: John, thanks  
17 for your comments. And thanks for being here.  
18 We're committed to work hand-in-hand with the  
19 Department of Fish and Game in this effort. And  
20 we want to be certain that whatever its ultimate  
21 output is, those guidelines are useful to Fish and  
22 Game and are considered appropriate by Fish and  
23 Game.

24 I met with our Executive Director and  
25 your Department Director some months ago to assure

1       that there would be adequate resources for your  
2       department to fully participate in this. And I'd  
3       ask you, if you perceive in the months ahead any  
4       resource issues limiting your participation, that  
5       you bring that to Commissioner Pfannenstiel's and  
6       my attention so that we can get that resolved  
7       quickly.

8               MR. McCAMMAN: Certainly will do, thank  
9       you very much for the opportunity.

10              PRESIDING MEMBER GEESMAN: And, again,  
11       we certainly welcome the Department's heavy  
12       involvement in this process.

13              MR. McCAMMAN: Good, thanks.

14              MR. YORK: Thanks, John. Okay, as I  
15       said, I'd like to give you a little overview on a  
16       variety of things, bring you up to speed as to  
17       where we are today.

18              First, I'd like to identify what the  
19       2005 Energy Report said about wind energy  
20       development and avian issues. I want to talk  
21       about the project goal; a little bit about the  
22       proposed process for developing the monitoring  
23       protocols and mitigation guidelines; talk briefly  
24       about the desired outcome; recent contacts that  
25       we've made; a very tentative schedule; how to

1 access information from today's proceedings and  
2 all future proceedings; and some of the staff  
3 contacts that you may need to utilize in the  
4 future.

5 First, what did the 2005 Energy Report  
6 state. It stated that taking advantage of  
7 California's substantial wind resources requires  
8 that two related issues be addressed. Repowering  
9 of the state's aging wind facilities, and reducing  
10 avian deaths associated with the operation of wind  
11 turbines.

12 Also it stated that California has an  
13 important opportunity to more carefully site new  
14 turbines, thereby reducing and avoiding bird  
15 deaths from wind turbines. It also stated that  
16 statewide protocols for studying avian mortality  
17 to address site-specific impacts in each  
18 individual wind resource area need to be  
19 developed.

20 So, the project goal is to develop  
21 statewide voluntary wind avian monitoring  
22 protocols and mitigation guidelines. We want them  
23 obviously to be science-based. We'd like to have  
24 them used by local permitting agencies. Applied  
25 by the Department of Fish and Game and wind

1 developers. We'd like to see it done in such a  
2 way so we do see a reduction in bird and bat  
3 impacts. But we also wanted this to be done so it  
4 does encourage new wind development and the  
5 repowering of existing facilities.

6 General statements about the process  
7 that we see. We obviously are going to be doing  
8 this under very regular collaboration with many  
9 people that we've already communicated with in  
10 emails or through phone calls.

11 We're going to be working closely with  
12 agency staff, obviously wind developers, county  
13 and city representatives. Made a lot of contacts  
14 there. Been working with environmental  
15 organizations such as Audubon, and obviously with  
16 the public.

17 We anticipate two or more public  
18 workshops, probably two or more maybe public  
19 hearings. We'll see how that unfolds.

20 What we actually will see as far as the  
21 actual writing of the protocols and guidelines,  
22 the Energy Commission Staff will be collaborating  
23 with Fish and Game on the writing of the  
24 guidelines and protocols. And we'll have peer  
25 review of what we write by the Science Advisory

1 Committee.

2 And drafts along the way will be  
3 obviously shared very regularly and we'll be  
4 seeking public comment on those drafts.

5 So the overall desired outcome will be  
6 that the monitoring protocols and mitigation  
7 guidelines are consistently applied by local  
8 permitting agencies to facilitate the permitting  
9 environmental review process and wind energy  
10 development, while minimizing impacts to birds and  
11 bats.

12 Recent contacts that have been made. We  
13 called -- Susan Sanders called all of the  
14 attendees of the January 2006 forum that was put  
15 on by California Audubon and the American Wind  
16 Energy Association. We were seeking their ideas  
17 on the protocols, themselves, and the guideline  
18 development process. How we should set up  
19 criteria for establishing who will be good  
20 candidates for the Science Advisory Committee that  
21 we're developing.

22 We got a lot of good input and we're  
23 taking many of the suggestions -- can't take all  
24 of them, but many of them were very very helpful  
25 to us, and we wanted to thank all of you for

1 participating in this lengthy discussion about the  
2 Science Advisory Committee. We also contacted  
3 many counties.

4 This is a very tentative schedule. This  
5 is, in general, how we see things today unfolding.  
6 Obviously this will change over time. We sent out  
7 the draft outline for the protocols and guidelines  
8 in April; asked you to look them over. Today is  
9 June 9th, the first Committee hearing.

10 We'd like to have written comments on  
11 what you hear today and the outline that we  
12 presented to you in April. We'd like to have them  
13 in about a week. We're actually going to start  
14 writing here fairly soon. And may have at least  
15 one workshop between now and mid-September where  
16 we'll actually present for public review and  
17 comment the first draft of the guidelines and  
18 protocols.

19 And the end date we hope is in mid-  
20 December, when we hope there is adoption of the  
21 guidelines.

22 We have set up a website for this  
23 proceeding, and a docket. So, all this  
24 information will be available. The sorts of  
25 things you could expect to find there will be



1 workshop and hearing notices, various draft  
2 protocols and mitigation guidelines that will be  
3 developed.

4 Any additional materials such as  
5 examples of what other countries and states have  
6 developed, we're obviously going to be looking at  
7 those things for ideas. And reports, studies,  
8 data that we actually did use in the development  
9 of the guidelines.

10 And last, but not the least, here's some  
11 contact information for some of the key staff  
12 folks here. We'll take your calls; we'd love to  
13 talk to you. But this really is just a start.  
14 There actually was quite a much longer list of  
15 folks who have been working behind the scenes on  
16 this, and I wanted to acknowledge them right now  
17 very quickly.

18 If you'd raise your hand so people can  
19 see you. John Mathias; Misa Ward; Paul Richins;  
20 and Kerry Willis. Kerry's our staff attorney.

21 From the Energy Commission's PIER  
22 program Linda Spiegel and Melinda Dorin.

23 And from Fish and Game, Scott Flint, Joe  
24 Vinsenty, David Sterner and Kevin Hunting.

25 So, if there are any questions I'll try

1 to answer them. If not, we can go right to Susan  
2 Sanders who wants to talk to you briefly about the  
3 outline that people have been asked to review and  
4 come to talk about.

5 Susan.

6 (Pause.)

7 MS. SANDERS: I'd like to thank all of  
8 you who I've talked to over the past couple of  
9 months. Your input has been very helpful in  
10 giving us some guidance on how to have this  
11 process work; and it will help shape how the  
12 public input comes in and how we incorporate good  
13 science into that.

14 I'm going to take about ten minutes now  
15 and go over the draft outline. And I repeat, this  
16 is just a draft. And then after that we'll spend  
17 the rest of the hearing listening to you and  
18 answering questions.

19 Rick described the need and purpose for  
20 these guidelines which will be part of the  
21 introductory chapter. Chapter one will describe  
22 the relationship of these guidelines to state laws  
23 like the California Environmental Quality Act and  
24 federal laws like the Migratory Bird Treaty Act.

25 This section will also refer the reader

1 to guidelines from other states and countries, as  
2 Rick mentioned. Canada, UK, Vermont and  
3 Washington. We'll be looking closely at those  
4 existing guidelines for some ideas for our own,  
5 and we'd like to hear from you if you have  
6 suggestions for elements of those that would be  
7 good to incorporate.

8 Chapter two will address the pre-  
9 permitting assessment and studies. Early in the  
10 siting process a preliminary environmental  
11 screening is essential to determine if there's any  
12 obvious conflicts, including wildlife issues, that  
13 might make the site unsuitable for development.

14 Information is needed at this stage to  
15 determine how the site's used by resident,  
16 wintering and migratory species.

17 The next step is to collect information  
18 that can be used to fine-tune the placement of  
19 turbines and other infrastructure, to predict the  
20 effects of wind development on birds and bats, and  
21 to provide the before data to compare to the post-  
22 construction data.

23 Preliminary information gathering makes  
24 use of existing data, and if the site's adjacent  
25 to a well studied windfarm, then most of that work

1       has already been done. If not, then the project  
2       biologist can make use of agencies like Fish and  
3       Game and Fish and Wildlife Service; and databases  
4       like the California Natural Diversity database,  
5       Wildlife Habitat Relationship System. And also  
6       local birders Audubon Chapters, experts  
7       knowledgeable about the area.

8               And, of course, the reconnaissance  
9       survey by a project biologist is really important  
10      before developing a detailed study plan, which is  
11      the next step.

12             The guideline recommendations for pre-  
13      permitting studies need to be flexible while still  
14      providing consistent, scientifically sound methods  
15      to collect data and assess impacts. This  
16      objective will be reflected in chapter two. We'll  
17      have recommendations on how to decide on the  
18      frequency, duration and scope of the  
19      preconstruction field studies.

20             We do not envision a one-size-fits-all  
21      recommendation, but rather a process that allows  
22      the user to determine the study effort that will  
23      be required based on the sensitivity of the site,  
24      the level of information available on the site,  
25      and the size of the project.

1           This chapter will provide the reader  
2       with an evaluation of the field methods and  
3       statistical tools available to design those  
4       studies, including the ones listed here. Daytime  
5       surveys with point counts or transects; nocturnal  
6       surveys with radar and other techniques; and  
7       recommended sampling protocol.

8           The preconstruction studies provide the  
9       basis for evaluating direct and indirect impacts  
10      of the project to birds and bats. It also lays  
11      the groundwork for mitigation. Chapter three will  
12      also provide some recommendations on how to  
13      establish the context for a cumulative impact  
14      analysis that will be considered adequate by state  
15      and federal agencies.

16          Chapter four will include a discussion  
17      of the purpose of post-construction surveys, which  
18      generally includes counting fatalities and  
19      comparing it to preconstruction estimates. These  
20      surveys are really the only way we have to see if  
21      the impact assessment that was done for the  
22      environmental document accurately predicted the  
23      impacts to wildlife, to see if the mitigation  
24      measures are working, or if something is needed to  
25      be adjusted to meet the goals of the mitigation.

1           This chapter also will provide  
2       recommendations for standardized metrics and  
3       reporting which will improve our ability to  
4       consistently report data and make comparisons  
5       between different wind sites.

6           The carcass count is the most commonly  
7       used tool for monitoring, and it's a topic that  
8       must be thoroughly address when designing the  
9       post-construction studies. This section will  
10      provide guidance on all the components that affect  
11      a carcass count, such as how to assess search or  
12      bias, scavenger removal and appropriate intervals  
13      between searches.

14          In addition to carcass searches, chapter  
15      four will talk about ongoing use surveys by bats  
16      and birds, because it's important to evaluate  
17      fatalities in the context of ambient levels of  
18      use.

19          In addition to discussing the science of  
20      the survey techniques for post-construction  
21      studies, we want to provide recommendations on  
22      interpretation, reporting and review of the  
23      reports by the public and resource agencies. This  
24      is particularly important if management actions  
25      need to be taken as a result of the data.

1           Some guidelines have dealt with the use  
2   of the issue of report interpretation and post-  
3   construction mitigation by calling for a technical  
4   advisory committee of experts that make  
5   recommendations using an adaptive management  
6   approach.

7           Which brings us to mitigation and a  
8   discussion of site-specific ways to avoid or  
9   minimize impacts with appropriate design and  
10   operations planning.

11           Post-construction mitigation measures  
12   that have been discussed in existing guidelines  
13   include habitat modifications like prey reduction,  
14   changes to grazing regime, changes in lighting,  
15   seasonal changes in operation.

16           Compensatory mitigation involves  
17   providing habitat protection or acquisition to  
18   compensate for unavoidable impacts to wildlife.

19           And finally, the guidelines will need to  
20   be updated as we learn more about wind, wildlife  
21   turbine -- or wind turbine/wildlife interactions  
22   and get feedback from users of the guidelines.  
23   We'd like to hear suggestions from you as to what  
24   kind of process would work for updating and  
25   revising the guidelines.

1                   And we'd like to hear from you on  
2           everything that we've talked about today. Have we  
3           left topics out? Have we included topics you  
4           think should not be in the guidelines? What do  
5           you think would be good subjects for future  
6           workshops for in-depth discussions.

7                   We ask for your comments today, and  
8           remember also you have another week to submit  
9           written comments, by June 16th.

10                  Thank you.

11                  PRESIDING MEMBER GEESMAN: I'm going to  
12           ask for blue cards for people that wish to speak  
13           to us today. I've got several already.

14                  Let me start with Julia Levin, Audubon,  
15           California.

16                  MS. LEVIN: Good morning, Commissioners;  
17           my name is Julia Levin; I'm the State Policy  
18           Director for Audubon, California.

19                  I want to start by thanking you for  
20           beginning this guidelines process. I think that  
21           you are, as you have in many areas, showing great  
22           leadership. And you will be solving a very  
23           important issue in California that I hope other  
24           states, and then the federal government in the  
25           future iteration of guidelines, and perhaps other



1 countries will follow, as they have followed the  
2 Commission in so many other areas.

3 We do believe that it's possible to  
4 operate and significantly expand wind power in  
5 California, and we hope to see that happen. I  
6 want to be very clear about that. But we think  
7 that it needs to be done sensitive to wildlife  
8 needs and other environmental concerns. And,  
9 again, we think that those can be balanced and  
10 they can be addressed without harming the wind  
11 industry. And, again, we applaud your efforts for  
12 trying to find that balance and practical  
13 solutions to these issues.

14 In order to balance these two things  
15 it's very important that the guidelines be  
16 science-based. And I want to make the point here,  
17 because there's been a lot of controversy around  
18 the science, particularly at Altamont, but  
19 elsewhere, as well.

20 Science is not a stakeholder process.  
21 It's very important that the scientists involved  
22 in this effort, as in other efforts involving  
23 wind, do not have any conflicts of interest.

24 And, Commissioner Geesman, I know you're  
25 an attorney by background, you know that receiving

1 financial compensation from the regulated  
2 industry, which is, in this case, the wind  
3 industry, is a very clear conflict of interest.  
4 And I hope that the Commission will continue to  
5 rely on scientists that are objective, that create  
6 good, unimpeachable science.

7 And where there are gaps, we continue to  
8 try to fill those in. But not continue to look  
9 backward at scientific work that's already been  
10 done. And not create scientific advisory groups  
11 that are, in fact, stakeholder groups. The policy  
12 decisions should be left to you and to the public  
13 and the policymakers, not the scientists.

14 I also think it's very important that  
15 the group rely on the members, both of the  
16 industry and the conservation groups and others,  
17 that are solutions-oriented. And I would like to  
18 commend a number of the wind companies here in the  
19 room and elsewhere. We've worked very closely  
20 with PPM and enXco, with John White at CEERT and  
21 many of his clients and staff.

22 And there are a number of industry  
23 members that are working very proactively trying  
24 to identify sensitive sites. They're coming to  
25 Audubon and Sierra Club and other conservation

1 groups to ask our advice; to try to find out what  
2 the concerns will be; asking who they should  
3 consult with; and then actually consulting with  
4 those biologists.

5 So that we feel a great deal of  
6 confidence in what they're doing and can stand up  
7 and say that's a good project. We think that's a  
8 good project. The impacts are minimal; they've  
9 done the right scientific work; and support it.

10 And we would like to see more of those.  
11 And I hope that as this process unfolds, you will  
12 rely for advice on those companies that are really  
13 looking for solutions and looking to get ahead of  
14 this issue, not the few that continue to deny that  
15 there's a problem here.

16 So, on the guidelines, themselves, I  
17 think that your staff and consultants have done a  
18 great job with the initial outline. The devil, of  
19 course, will be in the details. But i think it's  
20 a very good starting point.

21 I have just a few specific suggestions  
22 and additions, and then a couple of ideas for  
23 workshop topics.

24 So, actually before I get to that I do  
25 want to underscore, because it's easy when push

1 comes to shove, to say we need wind power. And  
2 certainly Audubon agrees with that and supports  
3 it. We don't want to have to deal with birds.  
4 Birds are out there, they're quiet, they fly, we  
5 don't, you know, -- how can we be asked to spend  
6 millions of dollars to protect birds or bats,  
7 which are even, you know, harder to find and see,  
8 for most of us.

9 And I just want to underscore the  
10 importance of birds. Aside from the fact that  
11 there are more than a dozen state and federal laws  
12 that require us to protect birds and other  
13 wildlife, they're a very important economic factor  
14 in California. Californians spend billions of  
15 dollars, \$2.5 billion a year, on wildlife-related  
16 activities. Much of which is related to birds.

17 They're important for recreation, for  
18 bird watching, for hunting. They help propagate  
19 crops; they help control rodents and other pests;  
20 and they're a very important resource in  
21 California for aesthetic and moral reasons. So,  
22 we do need to keep that in perspective as we move  
23 forward on the guidelines.

24 So my specific suggestions are very few.  
25 I think it's important in the preliminary

1       assessment -- this is where a lot of the meat of  
2       the guidelines needs to be -- that as much data as  
3       possible is made available to the public as early  
4       as possible.

5               This may require confidentiality  
6       agreements in some areas, but I think that the  
7       early consultations and the preliminary assessment  
8       of what level of further study will be required  
9       should be made publicly available, or at least  
10      available to whatever is the scientific review  
11      committee, maybe to Audubon members or other  
12      wildlife experts, so that that preliminary  
13      decision about what the in-depth field study, the  
14      amount of study that needs to occur, is made with  
15      a sufficient level of expertise and public buy-in.

16             We also think that given the realities  
17      of the state budget, particularly Fish and Game's  
18      budget -- and I know your staff and you are  
19      working hard to find resources for Fish and Game -  
20      - but we do believe that it's appropriate for the  
21      wind companies who should be consulting with Fish  
22      and Game to pay some sort of cost-sharing  
23      arrangement in that regard.

24             And I don't know exactly, I don't have a  
25      more concrete suggestion, but I think there should

1 be some sort of a preliminary application fee or a  
2 cost-sharing arrangement for the preliminary  
3 assessment. Because that assessment could be  
4 fairly time consuming, should be, for Fish and  
5 Game and others.

6 Then three areas that I would suggest  
7 workshops. And they all kind of relate to the  
8 idea of getting ahead of the curve, which I think  
9 is very important here to reduce the level of  
10 conflict between wind and wildlife.

11 The first is I think it would be great  
12 to hold probably a multi-day workshop on all the  
13 range of incentives for wind companies. As I  
14 said, some of them are already really being very  
15 proactive in this regard. Others less so.

16 I think that there are a whole range of  
17 incentives currently available that it would be  
18 helpful to identify more clearly and really have a  
19 menu that is obvious to the wind companies and the  
20 wildlife groups that would encourage all of us to  
21 work together more closely and more proactively.

22 Things like sales tax waivers, property  
23 tax waivers. I hate to get into the RPS, you  
24 know, REC world, I used to work in that world and  
25 I know John White's probably cringing to hear me

1 even mention it, but you know, some sort of extra  
2 credit, you know, maybe it's an RPS world, maybe  
3 it's in the tax world. There's probably other  
4 incentives available.

5 I also hesitate, as a conservationist,  
6 to mention fast-tracking in terms of permits, but  
7 I think that we should really consider the whole  
8 range of incentives both for early action, for  
9 experimental mitigation measures. And depending  
10 on who you ask, there are a lot of those. For  
11 different technology.

12 And perhaps most importantly, for  
13 access. Access to the properties, themselves, and  
14 access to data.

15 I know there have been some questions at  
16 Altamont and elsewhere about allowing non-industry  
17 biologists on the property. Again, I think the  
18 more we can encourage these sorts of behavior  
19 through whatever incentives are appropriate, the  
20 better. And I think that could easily be a multi-  
21 day workshop topic. There are a lot of different  
22 options and ramifications of each.

23 The second area that I think sort of  
24 related to incentives, but just maybe even more  
25 generally is how to get ahead of these issues; and

1 is directly related to the third, which is I think  
2 eventually there will be a system where we have, I  
3 don't know whether it's red, green and white, or  
4 pink, purple and blue, whatever the appropriate  
5 color scheme is, to let the wind companies know  
6 ahead of time for particular areas there's going  
7 to be a higher expectation for preconstruction  
8 surveys. And a higher expectation for mitigation.

9 You know, rather than the position that  
10 the wind companies are in now where they know  
11 where the wind resources are, but don't  
12 necessarily know, you know, where there are going  
13 to be red flags, or yellow flags or, you know,  
14 whatever color scheme you choose in the future.  
15 Letting them know ahead of time.

16 You know, we have good wind resource  
17 maps. Not as good, but, you know, gradually  
18 developing wildlife inventories. The more we can  
19 move the wildlife inventories into the wind  
20 resource maps and have some sort of a scheme that  
21 really identifies very clearly, this is an easy-go  
22 zone; you're going to have to do minimal work  
23 before and after. This is a difficult, but you  
24 can probably still do it. And this is a  
25 nonstarter, you know, there are just too many too



1 sensitive species.

2 Those sorts of tools, the more that we  
3 can all work together to develop them and make  
4 them available so that we can get everyone ahead  
5 of the curve here, I think would be enormously  
6 helpful.

7 So, sorry for long comments. Again, I  
8 just really cannot thank you enough for being  
9 responsive to the controversy and the request to  
10 find solutions here. And I have every confidence  
11 that you will.

12 Thank you.

13 ASSOCIATE MEMBER PFANNENSTIEL: Julia,  
14 may I just follow up on something. Thank you very  
15 much for your very positive helpful suggestions.

16 But you talked about three different  
17 workshop topics. And the one being incentives and  
18 the third one being to sort of classify or  
19 characterize more vulnerable areas.

20 I sort of missed what the second one  
21 was, if you can help me with that.

22 MS. LEVIN: I think the second and third  
23 are probably two parts of the same issue. The  
24 second one was just sort of generally looking for  
25 ways to get ahead of this issue.

1                   And then specifically developing some of  
2           the tools and maps, databases, things like that  
3           that help show the wind companies in particular,  
4           but also conservation groups and wildlife agencies  
5           which areas are going to require more or less  
6           work.

7                   And that may be all part of the same  
8           topic or not. There may be other ways to get  
9           ahead.

10                   ASSOCIATE MEMBER PFANNENSTIEL: Thank  
11           you.

12                   PRESIDING MEMBER GEESMAN: Thanks,  
13           Julia. I think Mark Sinclair from the Clean  
14           Energy States Alliance is on the phone. Can you  
15           connect him?

16                   MR. SINCLAIR: Hello.

17                   PRESIDING MEMBER GEESMAN: Mark?

18                   MR. SINCLAIR: Yes.

19                   PRESIDING MEMBER GEESMAN: Go ahead.

20                   MR. SINCLAIR: Hi. Thank you. I  
21           apologize for not being there in person. My name  
22           is Mark Sinclair. I represent a organization  
23           called the Clean Energy States Alliance, which is  
24           a coalition of 17 state clean energy funding  
25           programs including the California Energy

1 Commission, that works on challenges and  
2 opportunities for facilitating renewable energy  
3 markets.

4 So we represent a particular state  
5 public interest perspective in terms of fostering  
6 clean energy.

7 Through our work with this coalition we  
8 have become quite involved in the issue of the  
9 wildlife, and in particular, avian impacts of  
10 onshore, and now offshore, wind sitings. And we,  
11 over the last year, have been working with a  
12 number of states to insure that this issue is  
13 dealt with in a timely and responsible fashion.  
14 Because we believe that we all need wind power  
15 siting to be successful. And at the same time we  
16 need to insure that this technology is promoted in  
17 a responsible way so that it can spread as far as  
18 possible and help with our energy needs.

19 So we've been working in several  
20 different fora to make some very specific  
21 recommendations on regulatory and policy  
22 approaches to insure that wildlife laws are  
23 complied with in the wind siting area.

24 And in particular we've been working  
25 with the U.S. Fish and Wildlife Service and with

1 the wind industry to attempt to create a federal  
2 forum, a collaborative, if you will, to advise the  
3 U.S. Fish and Wildlife Service on their approach  
4 to this issue at a national level.

5 And one of the -- and I am encouraged to  
6 say that that national collaborative looks like it  
7 will be launched in the early fall under a formal  
8 Federal Advisory Committee Act, and there will be  
9 a Federal Register notice to that affect fairly  
10 soon. And the California Energy Commission will  
11 be, I strongly suspect, asked to participate in  
12 that national discussion.

13 The relevance of this to California I  
14 think is this, that from my perspective and my  
15 organization's perspective, it's important that a  
16 federal and state approach to this issue is  
17 coordinated. And that there is partnership  
18 between the federal approach and the state  
19 approach that recognizes state habitat  
20 differences.

21 But at the same time it gives wind  
22 developers and federal and state regulators the  
23 ability to look at this issue together. And to  
24 create a streamlined and coordinated approach so  
25 that you're not having guidance or recommendations

1       that differ between the federal government and the  
2       state government.

3               I think there's an opportunity for state  
4       and U.S. Fish and Wildlife Service to partner in  
5       much the same way that we do with some of the  
6       federal environmental laws, such as the Clean Air  
7       Act and the Clean Water Act, where states are  
8       allowed to work with the federal government, meet  
9       some general principles, and then either meet the  
10      minimum bar or strengthen their approach beyond  
11      the federal bar, with the federal government then  
12      giving the states the primary driver's seat for  
13      dealing with environmental regulations.

14             And I think we should be using that  
15      approach in this area of wildlife protection with  
16      wind siting.

17             So I would encourage the Commission and  
18      the Fish and Wildlife Department in California to  
19      plug into the federal approach, and to insure that  
20      your approach has buy-in and input from the U.S.  
21      Fish and Wildlife Service. And in some ways, you  
22      could be a leader in terms of creating a pilot  
23      project where your approach would be done in  
24      coordination with the federal thinking on this  
25      regulatory challenge.

1                   And you, in some sense, could be an  
2           innovative opportunity for thinking about the  
3           federal/state coordination. So I would encourage  
4           you to make sure the U.S. Fish and Wildlife  
5           Service is at the table, and that they are giving  
6           you some indication that your approach will also  
7           satisfy the federal laws, the Migratory Bird  
8           Treaty Act and the Endangered Species Act.

9                   I think that's a partnership that will  
10          help wind developers and regulators to this --  
11          come up with an approach that is streamlined and  
12          efficient. And that still takes a good decision.

13                  I want to make just a couple of other  
14          points. And I will provide more specific comments  
15          in writing before next week's deadline.

16                  Because of our work with U.S. Fish and  
17          Wildlife Service in other states we are very  
18          involved in similar collaboratives occurring in  
19          several other leading wind states, including New  
20          York State, Pennsylvania, Massachusetts and  
21          Vermont.

22                  So I would offer our time and our  
23          resources to provide the Commission Staff with  
24          insights as to how those states are tackling this  
25          issue so that California can pick the best

1 practices and consider what already is happening  
2 in this space.

3 While I think California has put an  
4 awful lot of resources already into dealing with  
5 this issue, and probably other states can learn  
6 more from California than vice versa, there are  
7 some interesting models emerging in places like  
8 Washington State, New York, that I think will have  
9 relevance to your deliberations.

10 And I would offer my resources in  
11 providing you with what's happening in those  
12 states so that you can see what makes -- what's of  
13 relevance to California.

14 A third, I guess a third point that I  
15 want to make is that I think it's important that  
16 the Commission understands that there is going to  
17 be avian mortality inevitable with wind projects.  
18 And that we have to come up with a practical  
19 approach that allows wind projects to go forward  
20 based on good baseline data and with the use of  
21 adaptive management.

22 There's an awful large amount of  
23 information yet to be learned about this issue.  
24 We shouldn't hold wind projects hostage to the  
25 lack of information. While gaining more

1 scientific data and information is key, we're  
2 never going to have sufficient information to  
3 eliminate this risk and this inevitable mortality.

4 So I think it's important that the  
5 approach that California takes insures that the  
6 projects are allowed to go forward even with some  
7 unknown risk. And that there are adjustments  
8 based on compensatory mitigation if we find that  
9 the risk is greater than what we know upfront.

10 I think we have to begin to learn from  
11 wind projects and insure quality monitoring, which  
12 I'm pleased to see that your outline embraces the  
13 use of adaptive management and good post-  
14 construction monitoring for that purpose.

15 I also -- one thing I missed on the  
16 outline that I would ask you to consider is  
17 there's been some increasing analysis in thinking  
18 about an ecological risk assessment approach to  
19 this issue by the National Wind Coordinating  
20 Committee. They've actually had a framework  
21 document put together on this issue of ecological  
22 risk assessment.

23 And I would recommend that the  
24 Commission and the Department look at the risk  
25 assessment approach. And I can get you those



1 background documents. You probably already have  
2 them. I think it's a tool that would encourage  
3 consistency among ecological assessment by  
4 providing a structured framework for  
5 decisionmaking. And I think it will encourage  
6 good science. And it will encourage the  
7 development of a solid knowledge base as we go  
8 forward.

9 PRESIDING MEMBER GEESMAN: Mark, if you  
10 would provide those documents to our docket it  
11 would be appreciated.

12 MR. SINCLAIR: I will do so. And I  
13 guess the final comment I want to make, so that  
14 I'm not misusing my time, is while I think science  
15 is obviously critical and good information, I also  
16 think that it's important for the Commission and  
17 the Department to consider the framework that the  
18 guidance will use, the approach that the guidance  
19 will use to apply that science to actual decisions  
20 that will be made by your counties and by wind  
21 developers.

22 And we've done some work with U.S. Fish  
23 and Wildlife Service in coming up with some fairly  
24 practical approaches that provide kind of the  
25 policy framework for applying the science, the

1 decision. And borrowing from some other legal  
2 frameworks in the environmental field that have  
3 worked.

4 And just quickly, the three approaches  
5 that we've been talking about are an approach that  
6 is used. Number one, model one is what's been  
7 used by the avian power line interaction  
8 committee, which dealt with this very issue with  
9 transmission facilities in the late '80s and into  
10 the '90s and into the early -- in to a couple  
11 years ago.

12 And they came up with basically rather  
13 than a hard set of guidelines, they came up with  
14 an avian protection plan concept that gives a  
15 utility, in this case, and the regulator, a lot of  
16 flexibility to allow for approaches that work for  
17 a particular developer and for a particular  
18 habitat area.

19 And I can again provide you with the  
20 avian protection plan that that industry has come  
21 up with, which the U.S. Fish and Wildlife Service  
22 has endorsed. And it's a -- you still have  
23 guidelines, but it's an approach where you get  
24 buy-in upfront from wind developers, in your  
25 context, to deal with certain principles which

1 provides them with basically a framework for being  
2 responsible in terms of doing assessments and  
3 reporting the information. And then doing  
4 adaptive management if they find that they are  
5 causing significant risk problems.

6 A second approach we've been asking  
7 regulators to consider is use of best management  
8 practices. BLM has been doing that with their  
9 western wind development program in this very  
10 field of avian protection. Coming up with a  
11 series of best management practices.

12 And then finally there is a -- we've  
13 asked regulators to consider the approach that is  
14 used under the Endangered Species Act, which is  
15 more of a tool kit and consultation process.

16 And I think in this area of wind and  
17 wildlife there's an awful lot we need to learn  
18 about mitigation approaches, what works and what  
19 doesn't work. And so the ESA tool kit approach  
20 allows for some creative exploration of mitigation  
21 in partnership with developers. And this is a  
22 fairly rigorous process, as many of you know.

23 So I would ask that you think about not  
24 only the scientifically based guidelines, but also  
25 how you're going to apply them to make this

1 approach workable in a voluntary fashion.

2 With that I just want to say that I  
3 commend the Commission and the Department for  
4 taking this issue on, and doing it in a  
5 responsible fully public way. And I think that  
6 partnership between the two agencies is key to  
7 success.

8 And I offer our organization's resources  
9 and ideas, as they're useful, to California. And  
10 I wish you all the best of luck in this very  
11 important enterprise, because you're being looked  
12 at by many other states for how you deal with  
13 this. Especially with the highlighted conflict  
14 over Altamont.

15 Thank you for your time.

16 PRESIDING MEMBER GEESMAN: Thanks, Mark.  
17 I think those are good points. And I want to make  
18 certain that our staff makes every effort it can  
19 to enlist the U.S. Fish and Wildlife Service into  
20 this process.

21 Mark, i did want to ask, with respect to  
22 the avian powerline study and mitigation  
23 approaches that you mentioned, connected with that  
24 study, do you have an opinion one way or the other  
25 as to whether the utility model involved in

1 powerline ownership suggests a different array of  
2 mitigation strategies than a developer model or a  
3 project finance model likely to be seen in third-  
4 party windfarm ownership?

5 MR. SINCLAIR: Yeah, I mean that's a  
6 very good point. I think the APLIC (phonetic)  
7 model -- if I understand your question right, I  
8 think the APLIC model, there is some potential  
9 carryover value, but there are potential  
10 limitations with that model in the wind context.

11 I mean there are -- a few of the  
12 transmission projects require a full-blown avian  
13 review at this point, which is troubling to me. I  
14 actually think wind is being given an unlevel  
15 playing field and the attention is being given to  
16 wind and wildlife issues. But that's another long  
17 discussion.

18 But I think in the transmission field,  
19 the industry can implement reasonably priced  
20 physical changes and configurations that  
21 significantly reduce mortality pretty readily.  
22 And I think that the wind siting challenge in the  
23 field is much greater. And there's not a set of  
24 easily verified mitigation approaches.

25 And it's a different industry,

1 obviously. The transmission industry can  
2 typically include those prices, those protection  
3 costs into the ratebase.

4 But I also think that there are some --  
5 I think the APLIC approach has some carryover  
6 because it puts responsibility on the wind  
7 industry to upfront come up and think very  
8 carefully about their approach to their project  
9 and this issue of avian protection.

10 And it calls for them creating, at the  
11 first instance, a project policy, a training  
12 program, a permit compliance requirement,  
13 construction design standard, management for avian  
14 resources, a reporting system. One of my  
15 frustrations is that a lot of the information  
16 that's being collected is not standardized, not  
17 verified and not reported. And it's hard to get  
18 wind companies to do that.

19 And so this approach would require them  
20 to, as a condition of getting an approval, come up  
21 with an avian reporting system that passes the  
22 laugh test. It would also require them to come up  
23 with a risk assessment methodology; quality  
24 control; avian enhanced options.

25 And i think it would give the industry

1 both flexibility and some responsibility upfront  
2 to really think through this issue and take some  
3 of the weight off the overworked regulators in the  
4 Fish and Wildlife agencies.

5 But that's a long way of saying I think  
6 it's not a perfect approach, but it has some  
7 elements that could be of use to your guide.

8 PRESIDING MEMBER GEESMAN: Thanks for  
9 your comments.

10 MR. SINCLAIR: Thank you.

11 PRESIDING MEMBER GEESMAN: Andy Linehan,  
12 PPM Energy.

13 MR. LINEHAN: Good morning,  
14 Commissioners and Staff. My name's Andy Linehan;  
15 I'm the Director for Permitting for PPM Energy.  
16 PPM Energy is one of the largest developers of  
17 wind energy around the U.S. Among other things,  
18 we own California's newest utility scale wind  
19 project, the 150 megawatt Shiloh wind project in  
20 Solano County.

21 And we have projects in various stages  
22 of development in several existing, and some of  
23 the newer wind resource areas in California.

24 I wanted to start by thanking the  
25 Commission for engaging in this process. And that

1 goes back to before your involvement in supporting  
2 the January conference in Los Angeles. That  
3 conference that was jointly sponsored by the  
4 California Audubon Society and the American Wind  
5 Energy Association.

6 That conference initiated a dialogue  
7 among the wind industry environmental stakeholders  
8 and state agencies which, if it continues in a  
9 positive way, could help assure the success of  
10 this process that you're starting on now.

11 I wanted to echo many of the comments of  
12 Julia Levin from Audubon, and also to remark that  
13 she has been a very constructive participant in  
14 this, and has been kind of a model of working  
15 constructively with the wind industry and with  
16 state agencies. And I'm hoping that that tone  
17 will continue through the rest of this process.

18 My company's perspective is that  
19 guidelines have the potential to assist the state  
20 in achieving its RPS goals while protecting the  
21 state's wildlife resources. Guidelines can do so  
22 by supporting counties that have less experience  
23 with wind power through the CEQA process, and  
24 helping them in their CEQA responsibilities.

25 It can help by facilitating agreement on



1        what pre- and post-construction studies are  
2        appropriate for wind projects of various types and  
3        in various settings. And it can provide a  
4        framework for mitigation decisions by the CEQA  
5        decisionmaker.

6                In order for guidelines to be a positive  
7        contribution to the development of environmentally  
8        responsible wind power, we believe they need to be  
9        built around the following understandings.

10               First, the guidelines should work within  
11        the current framework of California wildlife land  
12        use and CEQA law. Currently that law gives the  
13        local land use authority, typically the county,  
14        the primary role of consulting with CDFG and  
15        determining significance and mitigation, thus an  
16        appropriate role for the entity that best  
17        understands the local resource and the resource  
18        tradeoffs. And that role should not be modified  
19        through these guidelines.

20               Second, California's experience of wind  
21        power and wildlife includes many positive examples  
22        as well as some troubled history. Guidelines  
23        should recognize that we have gained a  
24        considerable amount of knowledge of wildlife  
25        effects of wind projects in a variety of settings,

1 both instate and out of state.

2 We believe the guidelines should  
3 understand and apply relevant knowledge from  
4 existing projects and should include a process for  
5 learning and change based on the lessons gained  
6 from current and future projects.

7 Third, it's essential that the  
8 guidelines be scaled to a range of settings with  
9 the corresponding process for evaluating risk.  
10 For example, the guidelines could specify the  
11 kinds of settings in which easily available  
12 screening information can indicate low risk and  
13 correspondingly low requirements for pre- and  
14 post-construction studies.

15 Similarly, the guidelines should  
16 indicate the kinds of easily identifiable risk  
17 factors that would indicate the need for more  
18 extensive field studies and post-construction  
19 monitoring.

20 My fourth point is that this nature of  
21 the process used to develop the guidelines is  
22 absolutely critical to their success and  
23 acceptance. I have no need to remind you of the  
24 contentiousness and the importance of the issues  
25 that will be addressed in the guidelines.

1                   The conference back in January  
2           instituted a dialogue among stakeholders in this  
3           process that has the potential to be a positive  
4           element in the development of these guidelines.

5                   I urge the Commission to think  
6           innovatively about how the guidelines are  
7           developed; I see some signs of that in the outline  
8           today. A standard regulatory process of hearings,  
9           followed by staff work, followed by comment on  
10          staff work product is unlikely to work in the  
11          contentious environment we find ourselves in.

12                  I suggest that the Commission assure  
13          that the process has many opportunities for  
14          dialogue and input by all stakeholders and is  
15          structured in a way that builds on success and  
16          maintains dialogue and input among all the parties  
17          throughout the process.

18                  And I think the idea for workshops is a  
19          good one and may need to be we add to the number  
20          of workshops. And I hope that they're all focused  
21          on specific elements of the guidelines and  
22          specific work product.

23                  My final comment is just a reference to  
24          Mark Sinclair's comments on the APLIC model. I  
25          think that's potentially a very good model. It

1       has a lot of relevance.

2               In the case of transmission line bird  
3       impacts it's a similar technology that utilities  
4       are having to deploy across a range of habitats  
5       and circumstances. The APP, avian protection  
6       plan, model provides, as Mark has indicated, a way  
7       to proactively understand and assess risk, report  
8       risk and adapt to it.

9               So I think that nothing that you've laid  
10       out so far would conflict with using a kind of an  
11       APP model for guidelines in California.

12              Thank you.

13              PRESIDING MEMBER GEESMAN: Let me ask  
14       you on that question, Andy, because I am only  
15       vaguely familiar with that approach. But it  
16       strikes me that in a utility setting there is a  
17       more continuous level of regulatory contact with  
18       the utility and a more readily available source of  
19       funding for mitigation discovered long after  
20       initial construction permits are issued.

21              And in a CEQA decisionmaker setting more  
22       commonly you have a very front-end loaded contact  
23       between the regulator and the developer. And you  
24       don't necessarily have the same level of ongoing  
25       financial resource to fund mitigation measures,

1 particularly mitigation discovered to be necessary  
2 after a construction permit is issued.

3 MR. LINEHAN: Well, I think, you know,  
4 there's the advantage of having that front  
5 loading, of course, is trying to discover issues  
6 and prevent them from becoming a problem later on.

7 But I think if you were to apply an APP  
8 model, it would of course have to stay with the  
9 project, if there's project ownership, for  
10 example, that APP commitment would have to stay  
11 on.

12 Yeah, there would have to be some  
13 tweaking because the APP plan is usually utility-  
14 wide, covering all of their service territory. It  
15 could work for a developer developing projects  
16 throughout, you know, the State of California.

17 However, again, the obligations that  
18 come under that APP would have to sort of flow  
19 through to the project, itself, and remain a  
20 project commitment. But I think there could be  
21 mechanisms for that, as well.

22 PRESIDING MEMBER GEESMAN: Thanks very  
23 much.

24 MR. LINEHAN: Thank you.

25 PRESIDING MEMBER GEESMAN: Brenda LeMay,

1 Horizon Wind Energy.

2 MS. LeMAY: Good morning, Commissioners  
3 and Staff. My name is Brenda LeMay with Horizon  
4 Wind Energy. I'm a Director of Development, and I  
5 focus on the State of California. I have an  
6 office here in California.

7 Horizon develops projects nationwide.  
8 Today we have over 600 megawatts installed in the  
9 country. We have been involved heavily in the  
10 Pine Tree Project development in the Tehachapi  
11 wind resource area, and also future projects which  
12 will help the state meet its RPS goals.

13 I wanted to thank you for taking a  
14 leadership role in California for renewable  
15 energy; and also on the avian issues over the past  
16 several months and prior to that.

17 I, too, was involved in the planning of  
18 the conference in January down in Pasadena. And I  
19 want to thank Julia Levin and her support  
20 throughout that process, as well as yours.

21 I agree with the comments of my industry  
22 colleague, Andy Linehan of PPM Energy. And I will  
23 follow up with more written comments on today.

24 I support the proactive involvement at  
25 every stage of the process that's already been

1 employed by Susan Sanders and the staff, as well  
2 as Rick York. I wanted to thank you for that.

3 I am encouraged to see the selection of  
4 the scientific advisory committee is upcoming and  
5 there will be a role that we can all play in that.  
6 It will be helpful if we can have a better  
7 understanding of what that role is going to be,  
8 and the roles of everyone involved.

9 In closing I would like to encourage us  
10 all to keep the greater environmental issues we're  
11 facing as a state and the role renewable energy  
12 can play in those issues.

13 Thank you.

14 PRESIDING MEMBER GEESMAN: Thank you,  
15 Brenda.

16 MS. LeMAY: Any questions? Thank you.

17 PRESIDING MEMBER GEESMAN: James Walker,  
18 enXco and AWEA.

19 MR. WALKER: Greetings, Commissioners.  
20 It's good to be back, it's been awhile since I've  
21 been here. And do represent enXco, which is a  
22 leading developer and operator of wind parks in  
23 California. We have projects that we own and  
24 operate in every one of the major wind resource  
25 areas. Recently built the Oasis Project in

1 Mojave, and developed the Shiloh Project that we  
2 then sold to PPM Energy.

3 I've just come back from the AWEA annual  
4 meeting which is growing as fast as the industry  
5 is. At that time I was also appointed head of the  
6 AWEA siting committee, and so that's a  
7 responsibility that's one of the major ones in  
8 addition to getting the PTCs extended every so  
9 often.

10 And so I think this is an opportunity  
11 for interaction, as well, at the national level  
12 because there does seem to be a number of state  
13 level activities in this regard going on that  
14 should all, in the end, add up to a positive  
15 environment, not a multiplicity of jurisdictions.

16 I think the Energy Commission should be  
17 commended for initiating this process. I think it  
18 is important for the Commission to realize that,  
19 as Andy and previous speakers said, there is an  
20 existing framework of local involvement, which  
21 doesn't mean to say that there can't be  
22 improvements and other things at that level.

23 And I think the Energy Commission in the  
24 past has had always a leading role in providing  
25 the funding for research and advancing the state



1 of the arts in these areas, which is very  
2 important.

3 And I was struck back in Washington when  
4 I was also asked to be on the steering committee  
5 for the President's DOE initiative to define what  
6 it would take to get to a 20 percent goal  
7 penetration of wind. When you look at the  
8 incredible amount of money that's been spent on  
9 health effects and environmental effects of  
10 nuclear fuels, and how little research money there  
11 is available in one of the few consistent plots  
12 has been this, the PIER program here.

13 I think it's important also to realize  
14 that involving Fish and Game and the California  
15 Attorney General's Office understanding this whole  
16 process is important. The Attorney General just  
17 recently has made a contribution by reaching a  
18 settlement with the Buena Vista Repowering Project  
19 with Babcock and Brown.

20 And while CEQA is important, there is a  
21 broader set of state laws that also have been  
22 enforced. And if there's a place that can, you  
23 know, address that and make sure that those  
24 entities are also comfortable, that the -- is  
25 improving, that will be important.

1           I think the Energy Commission's  
2       traditions of the way it makes decisions are very  
3       important. It has this unique balancing act in  
4       its legislation of energy and environment and  
5       economic values. That's important as part of the  
6       policy context that's been referred to.

7           I think also the Energy Commission has,  
8       in the past, recognized that essentially energy  
9       policy is an adaptive management plan. The  
10      biennial reports where you can get a need  
11      determination that would be absolutely concrete.  
12      And you had that for -- even if two years later  
13      the next biennial report said that power might not  
14      have been necessary.

15           You have to make commitments and move  
16      forward. And it's sort of ironically appropriate  
17      when we tend to extend the PTCs in two-year  
18      chunks, that whole cycle.

19           So anyway I think first as a company,  
20      and I think as an association, with the next one  
21      we'll be involved in this process, supporting it,  
22      and look forward to a continuous dialogue.

23           Thank you.

24           PRESIDING MEMBER GEESMAN: Thanks, Jim.

25      Let me say something about the role of local

1 government. Because we have alternatively  
2 referred to these guidelines as voluntary or as  
3 advisory.

4 They're voluntary or advisory to the  
5 local permitting agency. And we look at those  
6 local permitting agencies, principally counties,  
7 but perhaps a few cities, as well, as one of the  
8 principal clients of this effort.

9 And as a consequence I think anything  
10 that we adopt as guidelines need to be workable  
11 from the vantage point of those local governments.  
12 And our staff has made efforts to be in contact  
13 with as many of the principal local permitting  
14 agencies as possible. And throughout this process  
15 that's going to be a priority.

16 We don't envision these guidelines  
17 changing that jurisdictional role at all. We  
18 would envision the permitting authority remaining  
19 vested at the local level, and hope that these  
20 guidelines can be of service to those local  
21 permitting entities.

22 MR. WALKER: Appreciate that  
23 clarification, thank you.

24 PRESIDING MEMBER GEESMAN: Gary George,  
25 Los Angeles Audubon Society.

1                   MR. GEORGE: Good morning,  
2           Commissioners. Thank you so much for the  
3           opportunity to come here and speak to you today.  
4           And thank you for taking the lead on this issue.  
5           I'm very proud to live in the State of California.

6                   Our emphasis is a little more specific  
7           than our state office and Julia Levin. We support  
8           everything she's done for us in putting the  
9           conferences together and bringing the industry  
10          together.

11                   We have a specific issue with migratory  
12          song birds and southern California. And we'd like  
13          to see the workshops perhaps emphasize or be  
14          solely devoted, some of them, just to the issue of  
15          migratory song birds.

16                   In our research, and I could be wrong,  
17          we've found only one study using nocturnal surveys  
18          using radar in the State of California on a wind  
19          project, and that was in 1982 by Southern  
20          California Edison. So that's 25 years ago.

21                   There is publicly available radar from  
22          Edwards Air Force Base and others that can be  
23          interpreted to get a sense of where migratory song  
24          birds go. Those birds belong to different  
25          countries. They don't belong to one country. And

1       we think that they're a very very important issue,  
2       and that they've been overlooked.

3               I have some specific comments to make on  
4       the guideline workshops and I'll submit them in  
5       writing. But what I wanted to mention was that  
6       it's very very difficult to mitigate for the loss,  
7       especially the cumulative loss of migratory song  
8       birds. Two of them are endangered and fully  
9       protected in southern California.

10              But it's very very difficult to mitigate  
11       because you can't compensate for the cumulative  
12       loss of these migratory song birds, and you  
13       certainly can't set aside habitat in some other  
14       place. They won't go there.

15              So we think this is a very very  
16       important issue. We think that perhaps a workshop  
17       should be devoted to compensatory mitigation and  
18       to address this issue specifically of migratory  
19       song birds.

20              In the impact analysis we'd like to see  
21       that extended to the transmission towers that it  
22       takes to take the energy from the windfarms to the  
23       end user, or to the distributor to the end user.  
24       We think that those transmission towers also have  
25       impacts on birds, especially migratory song birds.

1                   Thank you very much.

2                   PRESIDING MEMBER GEESMAN: Thanks very  
3 much. Anne Mudge, Cal-WEA.

4                   MS. MUDGE: Good morning, Commissioners.  
5 My name is Anne Mudge, and I am a CEQA-permitting  
6 and land use lawyer with the lawfirm of Morrison  
7 and Foerster in San Francisco.

8                   And I'm here today on behalf of Cal-WEA,  
9 the California Wind Energy Association, which is a  
10 trade group of wind developers in California. I  
11 am a member of the siting committee of Cal-WEA,  
12 and I'm here today in that role on a volunteer  
13 basis.

14                   The other hat that I wear is as a local  
15 CEQA decisionmaker. I am Vice Chair of Oakland's  
16 Planning Commission. And although we don't have  
17 much occasion to review wind projects for downtown  
18 Oakland, I do have a sense of how data is  
19 presented to local CEQA decisionmakers in order to  
20 help them make the best policy decisions they can  
21 about siting projects.

22                   As a number of people have already  
23 outlined, there is an existing framework for  
24 siting wind projects in California. And  
25 Commissioner Geesman pointed out, and I was

1 encouraged to hear, that this process is intended  
2 to augment that, in that many local jurisdictions  
3 with wind resource areas already have zoning  
4 ordinances or wind siting elements in their  
5 general plans, which help guide the siting of wind  
6 projects in California. And that, of course, is  
7 supplemented by the California Environmental  
8 Quality Act, by CEQA.

9 And under CEQA local officials make  
10 siting decisions based on data that is presented  
11 to them by staff and consultants. And we agree  
12 that it is important to allow that function to  
13 continue to reside in the local CEQA  
14 decisionmakers, particularly in their role of  
15 determining what is a significant impact.

16 However, in order to do that they need  
17 the best data possible. And to that extent we do  
18 think guidelines could be useful in establishing  
19 recommendations about the level of effort needed  
20 in different resource areas to provide baseline  
21 information to make good policy decisions. So  
22 good policy has to be based on good science.

23 So, guidelines that focus on the amount  
24 and scope of information to be provided to local  
25 policymakers, particularly in the area of

1       preconstruction assessment and postconstruction  
2       monitoring, of recommendations about duration of  
3       study, methodologies, analytical frameworks. We  
4       would welcome that. We think that that would be  
5       useful to guide the local policymakers. So that  
6       they can make their siting decisions balancing  
7       environmental factors, economic factors and to  
8       support the state's stated encouragement for wind  
9       energy development.

10               And Cal-WEA looks forward to being  
11       actively and productively engaged in the process.  
12       Thank you.

13               PRESIDING MEMBER GEESMAN: Thank you  
14       very much. V. John White, CEERT.

15               MR. WHITE: Good morning, Commissioners.  
16       Thank you for having me, and thank you for doing  
17       this. I don't have a lot to add to the previous  
18       discussion. I think you have heard from quality  
19       people on what I hope are not two sides, but from  
20       a community of people that want to work together  
21       to help California move forward with one of the  
22       wedges in the state's energy pie, and in the  
23       struggle to reconcile our lifestyles and economy  
24       with the growing threat of climate change.

25               I was also in Pittsburgh this week, and



1 I was the beneficiary of a humorous bit of  
2 recognition by my colleagues from Texas who  
3 thanked me for the work that CEERT did in helping  
4 create the Texas RPS. We didn't tell the folks in  
5 Texas, very many of them, that we were down there  
6 helping. But we did help in forging a kind of  
7 coalition of environmental NGOs and industry that  
8 we have done in California and elsewhere.

9 But in addition to thanking me, they  
10 also gave me a symbol of Texas pride. They gave  
11 me a Hookam Horas orange foam finger about this  
12 big. But they took the little finger off so it  
13 was just this. And the symbol was that Texas had  
14 now replaced California as the number one wind  
15 state in the country.

16 And so it was a nice recognition, but  
17 there was a little edge to it, as well. And I  
18 think one of the things that California has to  
19 recognize in the national context to the extent  
20 that we're thinking about our role as a leader,  
21 and to thinking about our reputation for  
22 renewables in particular.

23 As the Commission's own document has  
24 reported, we are now using twice, more than twice  
25 the amount of coal as we are renewables in this

1 state. And, in fact, the megawatt hours of  
2 renewable generation bumps around between break-  
3 even and decline.

4 Ms. Levin, who I also want to commend  
5 for her diplomacy and thoughtfulness and  
6 willingness to participate in this process,  
7 pointed to the RPS and the array of incentives.  
8 But those incentives, combined with this sort of  
9 stalemate on policy at the PUC and by the actions  
10 of the utilities, have really sent a mixed message  
11 to folks that we are trying to get engaged to  
12 build our renewable infrastructure. And to help  
13 us clean our air and help us diminish our  
14 dependence on coal.

15 And none of this is to say there's  
16 tradeoffs and that we don't care about birds. I  
17 thought the testimony the Audubon gave, Julia  
18 gave, is eloquent and excellent in terms of the  
19 importance of birds to the California economy.

20 But we need this process to be part of a  
21 restoration of our leadership and a restoration of  
22 our eagerness to be successful, not only in  
23 talking about renewables, which we have the best  
24 talk in the country, but the words-to-megawatt  
25 ratio is a problem that we have.

1 (Laughter.)

2 MR. WHITE: Okay? These words are not  
3 matched by megawatts. And everybody has a role to  
4 play, whether it's the turbine manufacturers who  
5 keep seeming to index the price of their turbines  
6 to the price of natural gas, or to the utilities  
7 who have lots of excuses and not too much actual  
8 activity.

9 I think the Commission's recommendation  
10 in its IEPR to PG&E to follow the example of  
11 Edison in terms of repower guidelines that Nancy  
12 Rader proposed, those are useful. We need to keep  
13 -- I'm sorry, I haven't seen anybody from PG&E  
14 here today. I hope they come and participate and  
15 help us put an economic underpinning, not only  
16 under the Altamont, but under Tehachapi.

17 Because if we're talking about doing  
18 three years of surveys and all this upfront work,  
19 having people pay now; you're going to have a fee  
20 on wind companies to pay for Fish and Game. Let's  
21 recognize there's also got to be a business here  
22 that we're building. And that part has seemingly  
23 gotten lost in the course of events.

24 And yet part of the reason we're here, I  
25 think, is that we're almost ready to see some

1 projects getting built. But, you know, the only  
2 experience on Pine Tree was four years, and a not  
3 happy outcome completely at the end.

4 So I don't want to speak just from an  
5 industry point of view, because our group  
6 represents all of the major NGOs that work in the  
7 energy field, as well as several of the companies.  
8 There are incentives. Those incentives, I think,  
9 could be particularly useful in helping solve the  
10 data gap problem and helping -- we know the areas  
11 of the state that we're going to be seeing new  
12 development in that we haven't seen before, where  
13 there is a need for data.

14 We need to have that maybe be the first  
15 thing that we try to get at. But I really think  
16 this process and how we all handle ourselves going  
17 forward will be a test.

18 And so rather than think of this as  
19 sides in a debate, I'd like to think of us as a  
20 community that's dedicated to making California  
21 the renewable and wind energy leader that it once  
22 was, at the same time that we set new standards  
23 and new good examples of workable solutions to the  
24 problem of protecting our biological and wildlife  
25 resources.

1                   So, I thank you for your putting this  
2                   all together. I thank you for the fine work of  
3                   the staff. We're very encouraged by the way this  
4                   has started and look forward to doing everything  
5                   we can to help. Thank you.

6                   PRESIDING MEMBER GEESMAN: Thanks, John.  
7                   You know, Commissioner Pfannenstiel and I have  
8                   been pretty candid in our assessment of progress  
9                   or lack thereof in the RPS program. And we'll be  
10                  holding hearings later this summer on possible  
11                  retunings of that effort.

12                 And I certainly agree with you that the  
13                 words-to-megawatt ratio in California is a bit out  
14                 of line. I don't think the birds-to-megawatt  
15                 ratio is, though. And I'm not convinced at all by  
16                 anything that I've seen that avian considerations  
17                 in California thus far have been a significant  
18                 barrier. I think they hold the potential to be an  
19                 extraordinarily significant barrier.

20                 And I think that we ought to, in this  
21                 process, try and determine if we can have it both  
22                 ways. I don't think every site is going to be an  
23                 acceptable site. And I think we need to recognize  
24                 that.

25                 Hopefully we can develop guidelines that

1 can provide assistance to local governments in  
2 reaching their permit decisions in a timely  
3 fashion. And hopefully we can avoid some of the  
4 problems that have gone on in the earlier  
5 permitting decisions over wind development.

6 But I'm not convinced, myself, thus far  
7 that we can't have it both ways.

8 Kim Delfirio (sic), Defenders of  
9 Wildlife.

10 MS. DELFINO: Good morning. My name's  
11 actually Kim Delfino; sorry, my printing --

12 PRESIDING MEMBER GEESMAN: I'm sorry.

13 MS. DELFINO: -- is terrible. And I'm  
14 the California Program Director with Defenders of  
15 Wildlife here in Sacramento. And I'll make my  
16 comments brief because they're very similar to the  
17 very good comments that were already given by  
18 Julia Levin and Gary George with Audubon.

19 I do want to, though, mention that we do  
20 applaud -- Defenders of Wildlife works on wind  
21 energy issues at the national level, as well -- we  
22 really applaud the Energy Commission's leadership  
23 to move forward with guidelines. And believe this  
24 is very important, both at the state level, and  
25 also at the national level.

1           We also are very strong supporters of  
2       renewable energy and increasing our renewable  
3       energy. We do, though, agree with the excellent  
4       comments you just made, and that is this is an  
5       opportunity to get ahead of the game to try to  
6       reduce conflicts, because there are conflicts with  
7       siting of wind energy projects with wildlife. And  
8       we're here to try to minimize those and  
9       aggressively move forward with wind development,  
10      but not at the expense of our wildlife resources.

11           I just want to make a couple comments.  
12      One, I just wanted to underline Julia Levin's  
13      comment regarding the independence of science. We  
14      do believe that that is a really important issue  
15      that she raised, and we also do understand the  
16      fact that the world of avian scientists is small.  
17      And that there is not an endless supply of  
18      independent scientists out there.

19           So, we understand the confines in which  
20      we're operating. But we do think it's important  
21      to try to find those who will be the scientists  
22      providing the input on this who are, you know,  
23      have the least amount of conflict as possible. So  
24      that when we're moving forward with the science it  
25      is as independent and peer-reviewed and as good as

1 possible.

2 A couple things on the outline.

3 Overall, we think the outline presented looks very  
4 good, the guidelines. Want to highlight a couple  
5 of things. One, we just want to make sure that  
6 there's adequate attention paid to incompatible  
7 land uses.

8 Not just, you know, what's out there on  
9 the ground now, but that if you put a wind energy  
10 project somewhere where there's potentially  
11 grazing, how that could impact wildlife. That is  
12 something that needs to be -- the synergy of  
13 what's going on out there needs to be considered.

14 We also, similar to what Gary was  
15 saying, or actually exactly what Gary was saying,  
16 really want to look closely at the proximity to  
17 existing transmission lines. That's a very big  
18 issue. Trying to site wind energy projects so  
19 that you are not having to build a lot of new  
20 transmission lines.

21 The other thing on the impact analysis  
22 we just wanted to make sure that there is close  
23 attention paid to modeling for predicted  
24 mortality. And also looking at displacement  
25 effects. So that you're not just looking at the



1 effects of turbines hitting wildlife, but you're  
2 also looking at when you're putting turbines up  
3 there, wind energy projects up there, what does  
4 that mean for the wildlife that will move through  
5 there, but aren't being impacted. How are you  
6 displacing them? Are they moving over to another  
7 area? You have to look at it in a larger context.

8 And then the other thing I want to just  
9 conclude with, and that is the issue of sort of  
10 lack of information, the lack of science that's  
11 out there. This is a real opportunity, through  
12 putting these guidelines together, to look at  
13 framing a very aggressive research agenda.

14 And we're not saying that you shouldn't  
15 move forward until you have all the perfect  
16 science there, but this is an opportunity to  
17 actually start looking at what is not out there  
18 that would be useful in siting these projects.  
19 And structure a prioritization of research so  
20 that, you know, Fish and Game and other agencies  
21 can start directing dollars in the most efficient  
22 and effective way possible.

23 So that research isn't sort of willy-  
24 nilly, but it's more direct, more directed. And  
25 the guideline process can really do that. And I

1 would suggest that there be workshops focusing on  
2 that, if not one, but maybe a couple, a bird  
3 workshop and a bat workshop.

4 And that leads me to this last comment.  
5 There's a lot of information, or there is  
6 information out there on avian impacts. Bats, you  
7 know, that is a real issue in California. A lot  
8 of times we're hearing about it as discussion of  
9 impacts in the east. But there are impacts to  
10 bats here in California, and we don't want bats to  
11 be, just similar to what Gary was saying with  
12 respect to they're here to talk about migratory  
13 song birds, we just want to make sure that the bat  
14 issue is also addressed. It's an important  
15 resource as well, and one that we really should  
16 not pay short shrift to.

17 And with that, in conclusion, we just  
18 really want to thank the Commission for the  
19 opportunity to provide public comment. We will be  
20 submitting more detailed written comments. And we  
21 really look forward to moving forward and creating  
22 some cutting-edge guidelines that will create --  
23 put California back in the number one role on wind  
24 energy development, but also where I don't think  
25 maybe Texas is sort of there yet, but number one

1       in wildlife protection, as well.

2               Thank you.

3               PRESIDING MEMBER GEESMAN: Most of the  
4       Texas wildlife takes place in saloons.

5               (Laughter.)

6               PRESIDING MEMBER GEESMAN: I've  
7       exhausted my supply of blue cards. Is there  
8       anyone else in the audience who cares to address  
9       us? Anyone on the phone?

10              Well, I think we're done. As I said,  
11       this is the first of a series. Probably the next  
12       time you're gathered here will be for a staff  
13       workshop. But Commissioner Pfannenstiel and I  
14       will remain involved in the process and appear  
15       periodically as punctuation points.

16              I want to thank you all for your  
17       participation.

18              (Whereupon, at 11:30 a.m., the Committee  
19       Hearing was adjourned.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
hearing, nor in any way interested in outcome of  
said hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 21st day of June, 2006.

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